



August 10, 1999

Mr. Alan Bristol  
City Attorney  
City of Corsicana  
200 North 12<sup>th</sup> Street  
Corsicana, Texas 75110

OR99-2237

Dear Mr. Bristol:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126352.

The City of Corsicana (the "city") received several requests from city council member Emmaline Gonzales concerning "detailed billing information" for two identified cell phone numbers which are assigned to two specified police officers. In response to the request, you submit to this office for review a representative sample of the information at issue. You claim that the requested information is excepted from disclosure under Government Code sections 552.102, 552.108, and 552.117(2) of the Government Code. We have considered the exceptions and arguments you raise and reviewed the submitted information.

As a preface to our discussion, we note that the requestor is member of the city council. In the request letters and correspondence, the council member states that she is "officially requesting" the information at issue in her "capacity as an elected city councilperson." However, based on the city's arguments to this office, it appears that the city considers the requests to have the same status as a request from a member of the general public.

In Attorney General Opinion JM-119 (1983), this office stated that a member of the board of trustees of a community college district has an inherent right of access to district records when the trustee requests access to the records in his official capacity. Attorney General Opinion JM-119 at 3. Accordingly, the opinion concluded that when a trustee exercises his inherent right to district records and requests records in his official capacity and not as a member of the general public, the custodian of the district's records cannot deny the trustee access to the requested records on the basis of exceptions to public disclosure set forth in the

Public Information Act.<sup>1</sup> In order to carry out his official duties, a member of a governmental body must have complete and unfettered access to records maintained by the governmental body. *Id.*; Attorney General Letter Opinion No. 93-69 (1993). We note, however, that the determination of whether a requestor is acting in an official capacity rather than as a member of the public involves the resolution of factual issues outside the scope of the open records process. *See* Open Records Decision Nos. 554 (1990), 552 (1990).

Based on the council member's representations and for purposes of this ruling, if the council member's request for information in the governmental body's possession is in fact in her official capacity, the Public Information Act does not control the government official's right of access to the information. Attorney General Opinion JM-119 (1983). In such case, a release or transfer of the requested records to the city council member will not constitute a release to the public for purposes of section 552.007.<sup>2</sup> *See* Gov't Code § 552.007; *see also* Open Records Decision No. 468 (1987) (employee of agency whose job requires or permits certain access to records has not been granted access as member of public). In the *alternative*, if the city council member's request for information is outside the scope of her official capacity, and thus considered to be a request from a member of the general public, we next consider whether the requested information is excepted from public disclosure under your claimed exceptions.

We next consider the applicability of section 552.102 of the Government Code to the submitted records. Section 552.102(a) protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section

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<sup>1</sup>Furthermore, we have stated that absent express statutory authority, a majority of a governing board may not restrict an individual member's access to the records of the governmental body. *See* Attorney General Letter Opinion No. 93-69 (1993).

<sup>2</sup>Information may also be transferred from one individual to another within a governmental body without losing its confidential status. Open Records Decision No. 468 (1987).

552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 470 (1987), 455 (1987) (public employee's job performance is not generally protected by right of privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Based on the information at issue, we do not believe that the information is protected under section 552.102 of the Government Code.

We next consider your claim under section 552.108, the "law enforcement exception." Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, we note that section 552.108 is not applicable when no criminal investigation is undertaken.<sup>3</sup> *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982).

Specifically, this office has addressed the extent to which telephone numbers that police officers call on the cellular telephones is public information. In Open Records Decision No. 636 (1995), this office concluded that:

a cellular telephone bill does not explain on its face how its release would unduly interfere with law enforcement and crime prevention. Therefore, to claim the section 552.108 exception for this information, a governmental body must do two things: (1) mark the information it claims would tend to identify a confidential informant or would unduly interfere with law enforcement and crime prevention if released, and (2) detail how release of that marked information would identify the informant or unduly interfere with law enforcement. Without this information, the governmental body will not have met its burden under section 552.108. *A generalized explanation is insufficient; the governmental body's argument must be addressed to the particular records requested or the portions of those particular records for which*

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<sup>3</sup>Furthermore, this office has determined that section 552.108 does not protect general personnel information from public disclosure. Open Records Decision No. 562 at 10 (1990) (applying predecessor statute).


*the governmental body is claiming the section 552.108 exception.*  
Open Records Decision No. 434 (1986). [Emphasis added; footnotes omitted.]

In this instance you have not explained how the release of specific telephone numbers called on the cellular telephones would interfere with law enforcement beyond a "generalized explanation." We therefore conclude that you have not met your burden of demonstrating the applicability of section 552.108 to those telephone numbers.

Finally, we must consider whether some of the requested information must be withheld pursuant to section 552.117 of the Government Code. Gov't Code § 552.352 (distribution of confidential information is a criminal offense). Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members. Therefore, we conclude that the information subject to section 552.117(2) must be withheld; specifically, the city must withhold all home telephone numbers of police officers.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.<sup>4</sup> This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 126352

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<sup>4</sup>In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

encl: Submitted information

cc: Ms. Emmaline Gonzalez  
707 East 6<sup>th</sup> Avenue  
Corsicana, Texas 75110  
(w/o enclosures)